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Utusan Melayu (M) Bhd v Lim Guan Eng

B COURT OF APPEAL (PUTRAJAYA) — CIVIL SUIT NO P 02–1729–07 OF 2012
ZAWAWI SALLEH, HAMID SULTAN AND BADARIAH SAHAMID JJCA
14 AUGUST 2015

C

Tort — Defamation — Libel — Meaning of words — Article published in newspaper — Whether impugned words in ordinary meaning and when construed as a whole, defamatory — Whether defendant could rely on defence of fair comment — Whether defendant could rely on defence of qualified privilege — Claim for damages

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This was an appeal against the decision of the High Court in allowing the respondent's ('the plaintiff') claim in defamation against the appellant ('the defendant'). The defendant, the publisher of a Malay language daily known as 'Utusan Malaysia' had published an article with the heading, 'DEB Guan Eng Tetap Berdegil' based on the plaintiff's speech which referred to several aspects of the governance of Penang. The speech was widely reported by online as well as print media. The plaintiff filed an action against the defendant premised on the tort of defamation arising from the published article on the ground that the impugned words in its ordinary and usual sense carry the meaning that the plaintiff wished to abolish the new economic policy in Penang; the plaintiff was a criminal who had committed an action which had seditious tendencies punishable under the Sedition Act 1948; the plaintiff was a politician who maliciously intended to incite hatred between the various races in Malaysia; and the plaintiff was irresponsible, negligent and not qualified to hold public office as Chief Minister, Member of Parliament and State Assemblyman. The plaintiff claimed that as a consequence of the publication of the impugned words in the article, he had been seriously defamed and the words had brought the plaintiff into public contempt and ridicule and caused the plaintiff to suffer injury to his reputation. Thus, the plaintiff claimed for general damages, aggravated and exemplary damages for the libellous article published by the defendant. The High Court allowed the plaintiff's claim. Hence, the present appeal. The issues for determination before the High Court were whether the impugned words were defamatory and if they were, whether the defendant could rely on the defence of fair comment or in the alternative or in addition thereto, the defence of qualified privilege?

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Held, allowing the appeal with cost of RM20,000:

(1) The impugned words were not defamatory. The impugned article was published in Bahasa Malaysia in a Malay language daily. The right thinking members of society do not comprised Malays only. It referred to a wider section of society who might not be Malays. Since Bahasa Malaysia is the national language and widely used as a medium of communication, it would be fair to assume that those who read the *Utusan* and the impugned article were not merely confined to Malays but non-Malays as well (see para 27).

(2) The judicial commissioner had misdirected herself in undertaking a linguistic analysis of the impugned phrase 'menghapuskan' as compared to the word 'bebas'. A reasonable ordinary reader would be focused more on the likely effect of the different terminologies-not the niceties of the terminologies employed, including the degree of gravity attached to the words, as contended by the High Court judge. The effect of 'menghapuskan' is the same as 'bebas dari', that is the absence of the operation of DEB in Penang which was undisputedly announced by the plaintiff himself at a press conference (see paras 35 & 37).

(3) In construing whether the impugned words were defamatory or not, the impugned words must not be taken in isolation but must be construed as a whole. The words in the impugned article 'menghapuskan DEB' in its ordinary and usual meaning refers to a verb-a description of the intended action of the plaintiff. The article also expressly stated that the reason for the plaintiff's action was to address the inequitable position brought about by the operation of the DEB. How then by any stretch of meaning can this be read to impute that the intended action of the plaintiff demonstrates 'dishonourable or discreditable conduct or motives or a lack of integrity' on the plaintiff's part (see para 39).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi dalam membenarkan tuntutan fitnah responden ('plaintif') terhadap perayu ('defendan'). Defendan, penerbit surat khabar bahasa Melayu yang dikenali sebagai 'Utusan Malaysia' telah menerbitkan artikel dengan tajuk, 'DEB Guan Eng Tetap Berdegil' berdasarkan ucapan plaintif yang merujuk kepada beberapa aspeks pentadbiran Pulau Pinang. Ucapan dilaporkan secara menyeluruh melalui atas talian dan juga media cetak. Plaintif memfailkan tindakan terhadap defendan berdasarkan tort fitnah berbangkit daripada artikel yang diterbitkan atas alasan bahawa perkataan-perkataan yang dipersoalkan dalam maksud selalunya dan biasa membawa maksud untuk memansuhkan polisi ekonomi baru Pulau Pinang; plaintif adalah penjenayah yang melakukan tindakan yang mempunyai kecenderungan menghasut yang boleh dihukum di bawah Akta Hasutan 1948; plaintif adalah ahli politik yang berniat jahat berniat untuk menghasut kebencian di antara pelbagai bangsa di Malaysia; dan plaintif tidak bertanggungjawab, cuai dan tidak layak untuk memegang jawatan awam

sebagai Ketua Menteri, Ahli Parlimen dan Ahli Dewan Undangan Negeri. Plaintif mendakwa bahawa akibat penerbitan perkataan-perkataan yang dipersoalkan di dalam artikel, beliau telah difitnah secara serius dan perkataan-perkataan telah membawa plaintif kepada penghinaan awam dan cemuhan dan menyebabkan plaintif mengalami keburukan kepada reputasinya. Oleh itu, plaintif menuntut ganti rugi am, ganti rugi teruk dan teladan untuk artikel fitnah yang diterbitkan oleh defendan. Mahkamah Tinggi membenarkan tuntutan plaintif. Maka, rayuan ini. Isu-isu untuk penentuan di hadapan Mahkamah Tinggi adalah sama ada perkataan-perkataan yang dipersoalkan adalah fitnah dan jika ia, sama ada defendan boleh bergantung ke atas pembelaan komen adil atau alternatif atau dalam tambahan terhadapnya, pembelaan perlindungan bersyarat?

Diputuskan, membenarkan rayuan dengan kos sebanyak RM20,000:

(1) Perkataan-perkataan yang dipersoalkan bukanlah fitnah. Artikel yang dipersoalkan diterbitkan dalam Bahasa Melayu dalam surat khabar Bahasa Melayu. Ahli awam yang waras bukan mengandungi orang Melayu sahaja. Ia merujuk kepada bahagian awam yang meluas yang mungkin bukan orang Melayu. Memandangkan Bahasa Malaysia adalah Bahasa kebangsaan dan digunakan secara luas sebagai medium komunikasi, adalah adil untuk menganggap bahawa sesiapa yang membaca *Utusan* dan artikel yang dipersoalkan tersebut bukan sahaja terbatas kepada orang Melayu tetapi juga orang bukan Melayu (lihat perenggan 27).

(2) Pesuruhjaya kehakiman telah tersalah arah diri dalam menjalankan analisis bahasa frasa yang dipersoalkan 'menghapuskan' sebagai dibandingkan kepada perkataan 'bebas'. Pembaca munasabah biasa akan lebih memberi tumpuan ke atas kesan kemungkinan istilah berbeza bukan kepada ketepatan istilah yang digunakan, termasuk tahap graviti yang terlekat kepada perkataan-perkataan tersebut, seperti dihujahkan oleh hakim Mahkamah Tinggi. Kesan 'menghapuskan' adalah sama seperti 'bebas dari', bahawa adalah ketiadaan operasi DEB di Pulau Pinang yang mana tidak dipertikaikan diumumkan oleh plaintif sendiri di sidang media (lihat perenggan 35 & 37).

(3) Dalam mentafsir sama ada perkataan-perkataan yang dipersoalkan adalah fitnah atau bukan, perkataan-perkataan yang dipersoalkan tidak boleh dibuat secara berasingan tetapi mesti ditafsirkan secara keseluruhan. Perkataan-perkataan dalam artikel yang dipersoalkan 'menghapuskan DEB' dalam maksud selalunya dan biasa merujuk kepada kata kerja – deskripsi tindakan yang diniatkan oleh plaintif. Artikel juga secara jelas menyatakan bahawa alasan untuk tindakan plaintif adalah untuk menangani kedudukan tidak sama yang dibawa dengan operasi DEB. Maka bagaimana dengan memberikan apa-apa

maksud adakah ini boleh dibaca untuk mengatakan bahawa tindakan yang diniatkan oleh plaintif menunjukkan 'dishonourable or discreditable conduct or motives or a lack of integrity' oleh pihak plaintif (lihat perenggan 39).]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (5th Ed, 2015) paras 575–793.

Cases referred to

Al-Fagih v HH Saudi Research & Marketing (UK) Ltd [2002] EMLR 13, CA (distd)
Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 AMR 753, CA (refd)
Parmiter v Coupland and Another (1840)6 M & W 105 (refd)
Sim v Stretch [1936]2 All ER 1237, HL (refd)
Slim and Others v Daily Telegraph and Another [1968] 1 All ER 497, CA (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'cob v Bre Sdn Bhd [1996] 1 MLJ 393, HC (refd)

Legislation referred to

Defamation Act 1957 s 12
Sedition Act 1948

Appeal from: Civil Suit No 22–172 of 2009 (High Court, Pulau Pinang)

Mohana Kumar a/l TK Balakrishnan (Rohanidah bt Shafie with him) (Shafie & Mohan) for the appellant.
Jeremy Vinesh a/l Anthony Jeyakumar (Karpal Singh & Co) for the respondent.

Badariah Sahamid JCA (delivering judgment of the court):

[1] This is an appeal against the decision of the High Court of Pulau Pinang which allowed the plaintiff's claim in defamation against the defendant. The learned judicial commissioner ('JC') also awarded damages of RM200,000 and costs of RM20,000 to the plaintiff. This appeal before us is against liability as well as the quantum of damages.

BRIEF BACKGROUND FACTS

[2] The plaintiff was at all material times the Chief Minister of Pulau Pinang. The defendant was at all material times the publisher of a Malay language daily known as 'Utusan Malaysia'.

[3] On 8 March 2008, Pakatan Rakyat took over the governance of the state of Penang. The plaintiff was appointed the new Chief Minister of Penang on 11 March 2008. On the same day, the plaintiff held a press conference to deliver his maiden speech as the new Chief Minister of Penang. The speech referred to several aspects of the governance of Penang. The plaintiff's maiden speech was widely reported by online as well as print media. Exhibit P1 is a reproduction of the text of the plaintiff's reported speech:

> We will run the government administration free from the New Economic Policy (NEP) that breeds cronyism, corruption and systematic inefficiency. We will implement an open tender system for all government procurement and contracts.

[4] On 15 March 2008, the defendant had published an article with the heading, 'DEB Guan Eng Tetap Berdegil'. The impugned article is reproduced below:

1. Ketua Menteri Lim Guan Eng kesal dengan tindakan kira-kira 3,000 orang dari pelbagai pertubuhan bukan kerajaan (NGO) dan penyokong UMNO yang mengadakan demonstrasi diperkarangan Komtar disini hari ini.

2. Demonstrasi secara aman yang tidak melibatkan sebarang tangkapan atau kecederaan itu dibuat bagi menyatakan bantahan mereka terhadap DAP yang mahu menghapuskan Dasar Ekonomi Baru (DEB) di Pulau Pinang dalam pemerintahannya.

3. Sambil menegaskan akan tetap dengan pendiriannya untuk menghapuskan DEB di Pulau Pinang walaupun mendapat bantahan pelbagai pihak. 'Demonstrasi tersebut hanya menyusahkan rakyat Pulau Pinang.'

4. 'Saya terkejut dan kesal dengan tindakan (demonstrasi) yang telah dibuat kerana tiada sebarang memorandum di sampaikan kepada kami. Bagaimanapun pendirian saya tidak akan berubah seperti yang saya sebut pada hari pertama menjadi Ketua Menteri.

5. Kalau mereka ingin menyampaikan pandangan ia boleh dibuat dengan cara yang lebih baik dan betul iaitu menghantar memorandum atau berjumpa dengan saya.

6. Saya sedia mendengar suara semua rakyat termasuk yang datang dari UMNO. Tetapi hari ini saya sendiri tidak tahu apa tujuan mereka selain menyusahkan rakyat', katanya.

7. Beliau berkata demikian kepada pemberita selepas menerima kunjungan hormat Penasihat Parti Keadilan Rakyat (PKR), Datuk Seri Anwar Ibrahim dipejabatnya, di Tingkat 28, Komtar disini. Turut hadir Penasihat DAP, Lim Kit Siang.

8. Guan Eng juga menyifatkan usaha pemimpin UMNO negeri mengadakan demonstrasi untuk menjejaskan dan menjatuhkan pentadbiran kerajaan pimpinannya juga tidak akan berjaya.

9. Menurut beliau, pemimpi-pemimpin tersebut perlu menerima bahawa mereka telah kalah dan tidak dipilih oleh rakyat.

10. Demonstrasi ini dibuat cuma ingin mengalihkan pandangan kita daripada masalah dalaman yang mereka hadapi. Saya minta mereka hormatilah keputusan rakyat yang telah memilih kami pada Pilihan Raya Umum 8 Mac lalu.

11. Saya ingin menegaskan bahawa kerajaan baru ini akan bertindak adil kepada semua rakyat, kata Guan Eng.

THE PLAINTIFF'S STATEMENT OF CLAIM

[5] The plaintiff's cause of action against the defendant is premised on the tort of defamation arising from the published article above mentioned.

[6] The impugned words in the said article appear in paragraph three as reproduced below:

> 3. Sambil menegaskan akan tetap dengan pendiriannya untuk menghapuskan DEB di Pulau Pinang Walaupun mendapat bantahan pelbagai pihak Demonstrasi tersebut hanya menyusahkan rakyat Pulau Pinang.

[7] The plaintiff claims that the impugned words in its ordinary and usual sense carry the following meaning:

(a) the plaintiff wished to abolish the new economic policy in Penang;

(b) the plaintiff is a criminal who had committed an action which had seditious tendencies punishable under the Sedition Act 1948;

(c) the plaintiff is a politician who maliciously intended to incite hatred between the various races in Malaysia; and

(d) the plaintiff is irresponsible, negligent and is not qualified to hold public office as Chief Minister, Member of Parliament and State Assemblyman.

[8] The plaintiff claims that as a consequence of the publication of the impugned words in the article, the plaintiff has been seriously defamed and the words had brought the plaintiff into public contempt and ridicule and caused the plaintiff to suffer injury to his reputation.

[9] The plaintiff claims the defendant had not verified the truth of the impugned words published and had acted recklessly. The defendant did not tender any apology and had acted with unadulterated malice with the intention to destroy the plaintiff's political career.

[10] Thus the plaintiffs' claims for general damages, aggravated and exemplary damages for the libellous article published by the defendant.

DEFENCE

[11] The defendant pleaded the following in defence:

(a) the contents of the impugned article was written by a journalist of the defendant, Rokiah Abdullah, based on statements made at a press conference on 14 March 2008 at the 28th Floor, Bangunan Komtar, Pulau Pinang, held by the plaintiff as Chief Minister;

(b) the words in the impugned article in its usual and ordinary meaning taken in the context of the article as a whole are not defamatory;

(c) the impugned article was written and published in good faith premised, inter alia, on the press conference and without any malice towards the plaintiff;

(d) in addition or in the alternative, if the words in the impugned article are defamatory, the defence of 'fair comment' applies in that the impugned words were made honestly, without any malice and on a matter of public interest; and

(e) in addition, the impugned article is protected by qualified privilege pursuant to s 12 of the Defamation Act 1957.

ISSUES

[12] The issues for determination before the High Court may be summarised thus:

(a) whether the impugned words were defamatory?; and

(b) if the impugned words were defamatory, whether the defendant can rely on the defence of fair comment or in the alternative or in addition thereto, the defence of qualified privilege?

DECISION OF THE HIGH COURT

[13] The learned JC made a finding that the words in the impugned article, in particular that the plaintiff would, *'menghapuskan DEB di Pulau Pinang'*, had satisfied the three essential elements of defamation ie:

(a) the words referred to the plaintiff;

(b) the words were published to third parties; and

(c) the words were defamatory in that they had the tendency to lower the reputation of the plaintiff as Chief Minister and politician in the eyes of reasonable persons.

[14] The learned JC found that the defendant had acted with malice as the plaintiff's original text at the press conference (exh P1) was in the following terms:

> We will run the government administration *free from the New Economic Policy (NEP)* that breeds cronyism, corruption and systematic inefficiency ... (Emphasis added.)

[15] However, the defendant's journalist had failed to verify the accuracy of the plaintiff's statement as published in the defendant's daily.

[16] The learned JC referred to 'Kamus Besar Bahasa Melayu' and compared the meanings attached to the word 'menghapuskan' compared to the word, 'bebasdari'. The usage of the word 'menghapuskan' by the defendant is an incorrect translation of the English equivalent of 'free from' which should have been translated as 'bebasdari'. The words 'menghapuskan' carry serious connotations in a multiracial society:

> ... pembaca akhbar utusan Melayu khasnya masyarakat Melayu sudah pasti akan marah, benci dan dendam kepada Plaintif yang sewenang-wenangnya mahu menghapuskan DEB yang menjadi dasar nasional sejak tahun 1970 yang mana melibatkan hak-hak orang Melayu.

[17] The learned JC rejected the defendant's contention on the premise that the words 'menghapuskan DEB' was seriously damaging to the plaintiff to the extent that the damage was not alleviated by the concluding paragraph of the impugned article.

[18] The learned JC rejected the defendant's defence of fair comment on the grounds that the failure of the defendant to verify the accuracy of the statement made by the plaintiff demonstrates that the plaintiff had not acted honestly and was malicious in the publication of the impugned article.

[19] The learned JC also rejected the defence of qualified privilege on the premise that the defendant had failed to demonstrate the prerequisites that the impugned article was a 'fair and accurate' report of the statement made by the plaintiff at the press statement. The words used 'menghapuskan DEB' was inaccurate.

[20] The learned JC had made a finding of malice against the defendant, which defeated the defence of fair comment and qualified privilege.

[21] The learned JC took into consideration the plaintiff's position as Chief Minister of Pulau Pinang and that the impugned article was published in a leading Malay daily with a wide circulation, and awarded the plaintiff global damages of RM200,000, costs of RM20,000 and post judgment interest of 4%.

FINDINGS AND DECISION ON APPEAL

[22] After careful consideration of written and oral submissions of counsel, appeal records as well as relevant authorities, we are of the considered opinion that the impugned words are not defamatory. Thus, there is no necessity to consider the defences raised by the appellant. We therefore allow this appeal with costs. The grounds of our decision are stated below.

[23] The tort of defamation raises a number of difficult issues. Courts have had to grapple with the competing issues of freedom of expression and protection of claimant's reputation. This is particularly true in the context of the freedom of the press to publish material for public information and dissemination and the right of individuals to be protected from publication which is damaging to their reputation.

[24] It is not disputed that the impugned article refers to the plaintiff and there was publication of the impugned article, thus satisfying two of the three elements of the tort of defamation. The critical issue is whether the words in the impugned article are defamatory.

WERE THE WORDS IN THE IMPUGNED ARTICLE DEFAMATORY?

Who are the right thinking members of society?

[25] While there is no exhaustive definition of 'defamatory', several cases have laid down that a defamatory statement is one which injures the reputation of another by exposing him to hatred, contempt or ridicule, or which tends to lower him in the esteem of right thinking members of society. (*Parmiter v Coupland and Another* (1840) 6 M & W 105; *Sim v Stretch* [1936] 2 All ER 1237; *Tun Datuk Patinggi Haji Abdul-Rahman Ya'cob v Bre Sdn Bhd* [1996] 1 MLJ 393)

[26] The 'right thinking members of society' is essentially the objective standard of the 'reasonable person' which is applied by courts. An interesting issue which arises in this case is whether the 'right thinking members of society' is from a particular community or from society generally? The position taken by the learned JC appears to be from the perspective of the Malay community.

The learned JC in finding the impugned article to be defamatory referred to the publication that the plaintiff intended to 'menghapuskan DEB' would incite the hatred and contempt of the Malays – not the community in general:

> *Pada pendapat saya, pembaca akhbar Utusan Melayu khasnya masyarakat Melayu sudah pasti akan marah, benci dan dendam kepada Plaintif yang dengan sewenang-wenangnya mahu menghapuskan DEB yang menjadi dasar nasional sejak tahun 1970 yang mana melibatkan hak-hak orang Melayu.*

[27] In the instant case, the impugned article was published in Bahasa Malaysia in a Malay language daily. Are the right thinking members of society comprised of the Malays only or does it refer to a wider section of society who may not be Malays. Since Bahasa Malaysia is the national language and widely used as a medium of communication, it would be fair to assume that those who read the *Utusan* and the impugned article are not merely confined to Malays but non-Malays as well.

[28] The above contention is significant in the light of the judge's finding that the readers of *Utusan Melayu*, in particular, the Malay community would regard the plaintiff with contempt and ridicule.

[29] From the decided cases, society would appear to mean society as a whole and not merely a section of the community or a particular race. In the classic case of *Sim v Stretch* [1936] 2 All ER 1237, statements were held to be defamatory when they 'tend to lower the plaintiff in the estimation of right thinking members of society generally' [1936] 2 All ER 1237 (HL) at p 1240, per Lord Atkin.

[30] The case of *Al-Fagih v HH Saudi Research & Marketing (UK) Ltd* [2002] EMLR 13 (QBD) may be distinguished. In that case the offending article was published in Arabic. The court took into consideration the sensibilities of the Muslim society in which allegations of a sexual nature, especially when made against women was capable of a defamatory meaning. However, that case can be distinguished from the instant case in that the court took the view that the reputation of a person within his or her religious community may be damaged by a statement which would not be regarded as damaging to a society generally.

[31] In the instant case, it is arguable that the impugned article may have had the contrary effect of raising the plaintiff's esteem and repute in the eyes of the society in general. This is because the DEB is premised on the policy of affirmative action in favour of a section of a community (Bumiputra). Thus, the publication of the Chief Minister's statement to do away with DEB in order to implement an equitable system may be regarded positively by right thinking members of society generally.

The natural and ordinary meaning of words

[32] In para 5 of the statement of claim, the plaintiff claims that the impugned words in its ordinary and usual sense carry the following meaning:

(a) the plaintiff wished to abolish the new economic policy in Penang;

(b) the plaintiff is a criminal who had committed an action which had seditious tendencies punishable under the Sedition Act, 1948;

(c) the plaintiff is a politician who maliciously intended to incite hatred between the various races in Malaysia; and

(d) the plaintiff is irresponsible, negligent and is not qualified to hold public office as Chief Minister, Member of Parliament and State Assemblyman.

[33] What meaning should be ascribed to the impugned words? In construing the meaning of the impugned words the sense in which the words were intended by the defendant is not a relevant factor. The sense in which the words were understood by the plaintiff is also irrelevant. Neither is a linguistic analysis of the phrases used necessarily reflective of what is ordinarily understood by the reasonable person (*Slim and Others v Daily Telegraph and Another* [1968] 1 All ER 497 at p 504 A-B per Diplock LJ (as he then was).

[34] In the case of *Tun Datuk Patinggi Haji Abdul-Rahman Ya'cob v Bre Sdn Bhd* [1996] 1 MLJ 393, Richard Malanjum J (as he then was) had stated:

> The approach in the construction of words complained of is to consider the meaning such words would convey to ordinary reasonable person using their general knowledge and common sense; it is not confined to strict literal meaning of the words but extends to any reference or implication from which persons can reasonably draw.

[35] Thus, in the instant case, we are of the opinion that the learned JC had misdirected herself in undertaking a linguistic analysis of the impugned phrase 'menghapuskan' as compared to the word 'bebas'. In her grounds of judgment, paras 37(a-c), the learned JC had painstakingly analysed the dictionary meaning of the word *'menghapuskan'* from no less than three different dictionaries: *Kamus Besar Bahasa Melayu Utusan, Kamus Lengkap and Kamus Dewan (edisi Keempat).*

[36] From the analysis, she concluded thus:

> Setelah meneliti maksud perkataan 'menghapuskan' dan perkataan 'bebas' Mahkamah ini setuju dengan hujahan Plaintif bahawa perkataan 'menghapuskan' adalah lebih berat maknanya dari perkataan 'bebas' dan seharusnya tidak digunakan oleh Defendan terutamanya dalam konteks masyarakat majmuk Malaysia dimana

> sekiranya perkataan yang berat sebegitu digunakan, ia sudah tentu akan menyebabkan ketegangan sentiment antara kaum Melayu dan bukan Melayu khasnya dalam isu DEB.

[37] The ordinary reader is no linguist, nor inclined to make a comparative dictionary meaning of the terminology 'menghapuskan' as compared to 'bebasdari'. A reasonable ordinary reader, in our opinion, would be focused more on the likely effect of the different terminologies-not the niceties of the terminologies employed, including the degree of gravity attached to the words, as contended by the learned High Court judge. The effect of 'menghapuskan' is the same as 'bebasdari', that is the absence of the operation of DEB in Penang – which it is not disputed was announced by the plaintiff himself at a press conference on 14 March 2008 and reported in the press.

Imputation of dishonourable conduct or lack of integrity

[38] In the case of *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 AMR 753, Gopal Sri Ram JCA (as he then was) offered the following test to determine whether a statement is defamatory:

> ... the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the Plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[39] It is well established by authorities that in construing whether the impugned words are defamatory or not, the impugned words must not be taken in isolation but must be construed as a whole. The words in the impugned article 'menghapuskan DEB' in its ordinary and usual meaning refers to a verb-a description of the intended action of the plaintiff. The article also expressly states the reason for the plaintiff's action was to address the inequitable position brought about by the operation of the DEB. How then by any stretch of meaning can this be read to impute that the intended action of the plaintiff demonstrates, 'dishonourable or discreditable conduct or motives or a lack of integrity' on the plaintiff's part ?

[40] In this respect, reference was made to para 6 of the impugned article that reported that the plaintiff, 'sedia mendengar suara semua rakyat termasuk yang dating dari UMNO,' as well as the concluding paragraph which reported the plaintiff as saying, 'Saya ingin menegaskan bahawa kerajaan baru ini akan bertindak adil kepada semua rakyat, kata Guan Eng'.

[41] Thus it is our considered opinion that the words in the impugned article are not defamatory according to established principles applied in the

A case laws mentioned. We therefore allow the appellant's appeal with costs and set aside the decision of the learned JC.

Appeal allowed with cost of RM20,000.

B Reported by Afiq Mohamad Noor

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